

**STATE OF MICHIGAN  
DEPARTMENT OF LABOR & ECONOMIC GROWTH  
OFFICE OF FINANCIAL AND INSURANCE REGULATION**

**Before the Commissioner of Financial and Insurance Regulation**

**In the matter of**

**XXXXX**

**Petitioner**

**File No. 89271-001**

**v**

**Blue Cross Blue Shield of Michigan  
Respondent**

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**Issued and entered  
This 3<sup>rd</sup> day of July 2008  
by Ken Ross  
Commissioner**

**ORDER**

**I  
PROCEDURAL BACKGROUND**

On April 18, 2008, XXXXX (Petitioner) filed a request for external review with the Commissioner of Financial and Insurance Regulation under the Patient's Right to Independent Review Act (PRIRA), MCL 550.1901 *et seq.* The Commissioner reviewed the material submitted and accepted the request on April 25, 2008.

The Commissioner assigned the case to an independent review organization (IRO) because it involved medical issues. The IRO provided its analysis and recommendations to the Commissioner on May 9, 2008.

**II  
FACTUAL BACKGROUND**

The Petitioner is a twenty-one year old college student who has had nine knee surgeries in the last five years. She receives health care benefits from Blue Cross Blue Shield of Michigan (BCBSM) under its *Community Blue Group Benefits Certificate* (the certificate). Her physician requested preauthorization for meniscal allograft transplantation surgery.

BCBSM denied preauthorization for her knee surgery because it considers this procedure experimental for treatment of her condition. The Petitioner appealed BCBSM's denial through the internal grievance process. After a managerial-level conference on February 14, 2008, BCBSM did not change its decision and issued a final adverse determination dated February 22, 2008.

### **III ISSUE**

Did BCBSM properly deny preauthorization for the Petitioner's meniscal allograft transplantation surgery?

### **IV ANALYSIS**

#### **Petitioner's Argument**

The Petitioner believes that she has two options available to her. The first is to live a miserable life full of pain, as she has been living since 2003 or have the meniscal allograft transplantation surgery that has been recommended by her doctor.

The Petitioner, her surgeon and pain doctor have examined every other possible explanation for her chronic and persistent pain, as well as every other alternative to handle pain. Unfortunately, after five years these other options were not successful, leaving her needing the allograft transplantation surgery.

The Petitioner understands that BCBSM considers this surgery experimental. However other insurance carriers such as Humana, Anthem, United Health and Aetna do pay for this surgery if certain criteria are met. The Petitioner believes that she meets these criteria and BCBSM should be required to pre-approve and pay for this treatment.

The Petitioner has only a small window of time when she is a good candidate to have this surgery, before too much arthritis sets in. She believes that in a few years this surgery will not be considered experimental. However, that will be too late for her. She believes that BCBSM should be required to cover this surgery for her now.

### BCBSM's Argument

Under the provisions of the certificate, BCBSM does not pay for experimental treatment or services related to experimental treatment. BCBSM's medical director reviewed the documentation and concluded that meniscal allograft transplantation surgery is considered experimental/investigational since it has not been scientifically demonstrated to be as safe and effective as conventional treatment.

### Commissioner's Review

The Petitioner's certificate sets forth the benefits that are covered. In *Section 6: General Conditions of Your Contract*, it says (page 6.3):

We do not pay for experimental treatment (including experimental drugs or devices) or services related to experimental treatment, except as explained under "Services That Are Payable" below.<sup>1</sup>

Also, the certificate, in *Section 7: The Language of Health Care* on page 7.7, defines "experimental treatment" as:

Treatment that has not been scientifically proven to be as safe and effective for treatment of the patient's conditions as conventional treatment.

The question of whether the Petitioner's proposed meniscal allograft transplantation surgery is considered experimental in nature was presented to an IRO for analysis as required by section 11(6) of PRIRA, MCL 550.1911(6). The IRO physician reviewer is certified by the American Board of Orthopedic Surgery, is a member of the American Academy of Orthopedic Surgeons, is published in the peer-reviewed medical literature, and is in active practice.

The IRO reviewer indicated the clinical literature is relatively sparse as it pertains to meniscal allografts. Typically, the results have been in a small number of patients with short term follow up. Oftentimes the procedure has been combined with additional procedures such as an anterior cruciate ligament reconstruction to restore stability. Because of this, the existing literature

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<sup>1</sup> The experimental treatment exceptions deal only with services in an approved oncology clinical. There is no indication that cancer is involved in this case and therefore the exceptions do not apply.

does not truly offer long term studies which would suggest that this particular procedure would move beyond what would be traditionally be called investigational.

The IRO reviewer determined that the meniscal transplant, knee with scope surgery is considered experimental/ investigational for the Petitioner's condition.

The Commissioner is not required in all instances to accept the IRO's recommendation. However, the IRO recommendation is afforded deference by the Commissioner; in a decision to uphold or reverse an adverse determination the Commissioner must cite "the principal reason or reasons why the Commissioner did not follow the assigned independent review organization's recommendation." MCL 550.1911(16) (b). The IRO reviewer's analysis is based on extensive expertise and professional judgment and the Commissioner can discern no reason why the recommendation should be rejected in the present case.

The Commissioner accepts the conclusion of the IRO and finds that the Petitioner's proposed meniscal allograft transplantation is experimental/investigational for treatment of her condition and therefore is not a covered benefit under the certificate.

## **V ORDER**

Respondent BCBSM's February 22, 2008, final adverse determination is upheld. BCBSM is not required to cover the Petitioner's proposed meniscal allograft transplantation.

Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than sixty days from the date of this Order in the circuit court for the county where the covered person resides or the circuit court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of the Office of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.